

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID L. JACKSON, JENNIFER A. O'FLYNN
and KIMBERLY J. ZACHARY

Appeal No. 2006-0905
Application No. 10/321,346

ON BRIEF

Before KIMLIN, GARRIS and FRANKLIN, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 19-21 and 23-27. Claims 1-8, 10-12, 14-18, 22 and 28-31 have been allowed by the examiner. Claims 19 and 21 are illustrative:

19. A carrying case for a heated food container, said case comprising:

a box comprising:

a flexible side wall;

a flexible bottom wall;

a flexible lid;

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a clamp assembly located within said box for clamping a container within said box; and

a cinch strap extending around said side wall.

21. A carrying case for a heated food container, said case comprising:

a box comprising:

a flexible side wall;

a flexible bottom wall;

a flexible lid; and

a clamp assembly located within said box for clamping a container within said box, said clamp assembly comprising a first, flexible clamp member and at least one clamp strap, said member comprising a ribbon of netting and said at least one flexible strap being releasably connected by a hook and weave connector assembly.

The examiner relies upon the following references as evidence of obviousness:

Anderson	2,825,208	Mar. 4, 1958
Lin	5,472,279	Dec. 5, 1995
Shyr et al. (Shyr)	5,678,666	Oct. 21, 1997
Kinzer et al. (Kinzer)	6,076,641	Jun. 20, 2000

Appellants' claimed invention is directed to a carrying case that can be used for transporting heated food. The case comprises a box having flexible side and bottom walls and a flexible lid, as well as a clamp assembly within the box that is used for clamping a container within the box. The carrying case of claim 19 also contains a cinch strap extending around the

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sidewall, whereas the carrying case of claim 21 defines the clamp assembly as a flexible ribbon of netting.

Appealed claims 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin and Anderson. Claims 21 and 23-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shyr in view of Kinzer.

Appellants have not separately argued the claims separately rejected by the examiner. Accordingly, claims 19 and 20 stand or fall together as do claims 21 and 23-27.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we find that the examiner has drawn the proper legal conclusion that the claimed subject matter on appeal would have been obvious to one of ordinary skill in the art within the meaning of Section 103. Accordingly, we will sustain the examiner's rejections.

We consider first the rejection of claims 19 and 20 over Lin in view of Anderson. There is no dispute that Lin, like appellants, discloses a carrying case for heated food comprising flexible side and bottom walls and a flexible lid. As appreciated by the examiner, the carrying case of Lin does not include a clamp assembly in its interior. However, we agree with the examiner that Anderson evidences the obviousness of

incorporating a clamping assembly for the purpose of retaining the articles within the case. We are not persuaded by appellants' argument that "one would hardly consider providing ties which must be tied together in the manner taught by Anderson for holding a heated food container in a carrying case" (page 8 of principal brief, penultimate paragraph). The broadly recited "clamp assembly" of claim 19 does not exclude the ties of Anderson and, furthermore, the recitation "for a heated food container" is a statement of intended use that does not further define the structure of the claimed carrying case. Also, it is not apparent why one of ordinary skill in the art would not consider the ties of Anderson for securing items within the carrying case of Lin. Moreover, we are satisfied that Anderson would have reasonably suggested to one of ordinary skill in the art the use of any number of different conventional clamping means for the carrying case of Lin.

We do agree with appellants that the "sticker fastener bands" (112 and 123) do not meet the claimed requirement for a cinch strap. While the examiner maintains that appellants do not define any structure for the cinch strap, a cinch is defined as a saddle or pack girth. Hence, simply by definition, the sticker fastener bands of Lin cannot reasonably be interpreted as a cinch

strap. Nevertheless, this is not to say that we find that one of ordinary skill in the art would not have found it obvious to incorporate a cinch strap on the carrying case of Lin. On the contrary, based on the definition of cinch alone, it is quite evident that it is notoriously well known to use a cinch to secure a variety of items.¹ In the present case, we are satisfied that it would have been obvious for one of ordinary skill in the art to modify the carrying case of Lin with a cinch strap on its exterior for the obvious purposes of securing the items within and making the case smaller and more readily transportable.

We now turn to the rejection of claims 21 and 23-27 over Shyr in view of Kinzer. Shyr discloses a carrying case comprising a box having a clamp assembly located within the box wherein the clamp assembly comprises a flexible clamp member. The flexible clamp member of Shyr is not a ribbon of netting as presently claimed. However, we concur with the examiner that Kinzer establishes that it would have been obvious for one of ordinary skill in the art to make the flexible clamping members of Shyr from a netting material. Again, it is important to

¹See Kinzer of record for use of a cinch strap for securing items.

emphasize that the claim recitation "for a heated food container" is simply a statement of intended use that does not further define the structure of the claimed carrying case. Hence, it is irrelevant that the carrying cases of Shyr and Kinzer are not described as carrying cases for a heated food container.

Appellants contend that "there is no provision [in Kinzer] for enabling the dividers to clamp smaller stacks of articles against the back 14" (page 10 of principal brief, first paragraph). The relevancy of this argument escapes us since the rejected claims recite no requirement for clamping smaller stacks of articles. In any event, Kinzer discloses that a strap is cinched "to pull the divider **80** tightly against the packed clothes" (column 11, lines 53-54). Accordingly, it would seem that the netting of Kinzer is fully capable of clamping smaller articles.

We also do not subscribe to appellants' argument that "the dividers [of Kinzer] do not form or constitute parts of clamp assemblies as recited in claims 21 and 23" (sentence bridging pages 3 and 4 of reply brief). Kinzer teaches that elements 80 and 81 "maintain the stored luggage items in order during luggage transport and handling, and particularly to prevent the packed items from shifting to the bottom of the case 10 when the case is

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placed upright" column 12, lines 9-11. In our view, elements 80 and 81 of Kinzer are fully capable of meeting the requirement of the claimed clamp assembly for clamping a container within the box.

As a final point, we note that appellants base no arguments on objective evidence of nonobviousness, such as unexpected results, which serve to rebut the prima facie case of obvious for the claimed subject matter.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136.

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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BRADLEY R. GARRIS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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BEVERLY A. FRANKLIN)	
Administrative Patent Judge)	

ECK:hh

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